IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4849 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NANJIBHAI NARANBHAI MEKHIYA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 4849 of 1992

MR JT TRIVEDI for Petitioner No. 1-6

MR MA BUKHARI APP for Respondent No. 1

MR DHARMESH V SHAH for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 10/10/2002

ORAL JUDGEMENT

The learned counsel Mr Trivedi vehemently argued that the complaint sought to be quashed, that is, complaint in Criminal Case No.3483 of 1992 pending in the Court of the learned Chief Judicial Magistrate, Ahmedabad Rural, was a counter-blast to the criminal case filed by the wife of the original complainant in the present case. He further submitted that in reality, there was a matrimonial and family dispute among the relatives and the criminal prosecution was sought to be used as a lever to pressurize the petitioners into arriving at a settlement. He further submitted that some of the petitioners were in fact not even present in Ahmedabad when the offences were alleged to have been committed.

2 Obviously, the petitioners have sought to press into service the defences which can be taken at the time of the trial and no finding of facts can be arrived at in this Court in a petition under Section 482 of the Criminal Procedure Code. It was also noticed that copy of the complaint alleged to have been filed by the daughter of the petitioner no.1 in the Court of the learned JMFC, Rajula, did not mention either the number or the date of filing. Therefore, in short, no case was made out to quash the complaint. The grievance, however, was made that by virtue of the complaint against several persons the accused persons, the petitioners herein, were put to harassment and undue hardships as they would be required to remain personally present at the time of trial. Although no prayer is made in that regard, it can be observed that the petitioners would be at liberty to file appropriate applications for exemption under Section 205 of the Criminal Procedure Code and the same may be considered and decided by the trial court in accordance with law. It was pointed out by the learned counsel that as held by this Court in JAYANTILAL CHHAGANLAL PANCHAL V. SHIRISH SHANTILAL PANDYA [1986(1) GLR 287] it is the privilege of the accused persons to attend the trial and, unless it is necessary, it should not be converted into an obligation. It would, however, be for the trial Court to decide the application, if and when such application is made, in accordance with law. With these observations, the petition is rejected and Rule is discharged with no order as to costs. Interim relief stands vacated.

(D.H.Waghela, J.)
(mohd)